



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0745]

RIN 1625-AA00

Safety Zone; Potomac River, Between Charles County, MD and King George County, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is revising a temporary safety zone that was established for certain waters of the Potomac River. This action is necessary to provide for the safety of persons, and the marine environment from the potential safety hazards associated with construction operations at the new Governor Harry W. Nice / Senator Thomas "Mac" Middleton Memorial (US-301) Bridge, which will occur from 7 a.m. on November 2, 2021, through 8 p.m. on December 31, 2021. This rule will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port, Sector Maryland-National Capital Region or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2021. For the purposes of enforcement, actual notice will be issued from November 2, 2021, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0745 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related

Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Samuel Danus, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410-576-2519, email Samuel.M.Danus@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
§	Section
TFR	Temporary Final Rule
U.S.C.	United States Code

II. Background Information and Regulatory History

On September 10, 2021, Skanska-Corman-McLean, Joint Venture, notified the Coast Guard that the company will continue to set 200-ton pre-cast fender ring elements at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge at Piers 43 and 44, which are adjacent on either side of the federal navigation channel from September 13, 2021 through December 31, 2021. In response, on September 17, 2021, the Coast Guard issued a TFR; request for comments, Safety Zone; Potomac River, Between Charles County, MD and King George County, VA (86 FR 52826). There, we stated why we issued the TFR, and invited comments on our regulatory action related to this bridge construction activity due to the duration of the rule. During the comment period that ended October 25, 2021, we received 5 comments. The Coast Guard has amended this rule based on these comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this amended rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated

with construction operations at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge conducted within the federal navigation channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with bridge construction starting November 2, 2021, will be a safety concern for anyone within the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge construction site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being constructed.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 5 comments to the rule. Two commenters expressed their support of the zone, including the temporary safety zone's importance to protecting the marine environment. We concur, as stated in Section III, the rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone.

The remaining 3 comments were provided by the bridge contractor, Skanska-Corman-McLean, Joint Venture, who provided revised dates for work requiring the continuous 24/7 enforcement of the zone for certain periods. One comment stated that the construction of protective fender rings around Piers 43 and 44, on either side of the federal channel, was scheduled to occur October 25, 2021, through October 29, 2021. However, the contractor provided a subsequent comment, eight days later that revised the dates for this activity to 7 a.m. on November 4, 2021, through 8 p.m. on November 6, 2021, and 7 a.m. November 8, 2021, through 8 p.m. November 10, 2021. In addition, the final comment provided by the bridge contractor stated work required to set structural

steel across the federal channel, originally scheduled to occur in November 2021, is now scheduled to occur 7 a.m on December 6, 2021 through 8 p.m. on December 18, 2021.

Based on the comments provided by the contractor, the Coast Guard is amending the regulatory text of this rule. The work described by the contractor requires the movement in and anchoring at multiple points of a large crane in the channel, as well as, nighttime diver work. This operation will impede vessels requiring the use of the channel. Although the setting of structural steel across the channel was not discussed in our original rule (86 FR 52826), this activity coincides with the original rule's effective dates and requires the same safety zone. Due to the nature of the work and susceptibility to rescheduling due to weather, equipment readiness, material availability or other issues resulting in construction delays, the Coast Guard is amending the regulatory text of the regulation to state that the exact dates and times of enforcement will be announced to the public by Broadcast Notice to Mariners, Local Notice to Mariners or other appropriate means. All other aspects of the original rule remain unchanged other than the correction of a scrivener's error in the title to paragraph (g).

This amended rule establishes a temporary safety zone from 7 a.m. on November 2, 2021, through 8 p.m. December 31, 2021. The safety zone will cover all navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'50.96" N, 076°59'22.04" W, thence south to 38°21'43.08" N, 076°59'20.55" W, thence west to 38°21'41.00" N, 076°59'34.90" W, thence north to 38°21'48.90" N, 076°59'36.80" W, and east back to the beginning point, located between Charles County, MD and King George County, VA. The temporary safety zone is approximately 450 yards in width and 270 yards in length.

The bridge owner will post a sign facing the northern and southern approaches of the navigation channel labeled "BRIDGE WORK—DANGER—STAY AWAY" affixed to the sides of the on-scene marine equipment and vessels operating within the area of the

safety zone. *Marine equipment* means any vessel, barge or other equipment operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors. This notice will consist of a diamond shaped sign (minimum 4 feet by 4 feet) with a 3-inch orange retro reflective border. The word “DANGER” will be 10 inch black block letters centered on the sign with the words “BRIDGE WORK” and “STAY AWAY” in 6 inch black block letters placed above and below the word “DANGER,” respectively, on a white background.

While the safety zone is effective from 7 a.m. on November 2, 2021, through 8 p.m. December 31, 2021, in most circumstances, the safety zone will be enforced 7 a.m. until 8 p.m., daily, Monday through Saturday. There will be periods of continuous 24/7 enforcement due to the nature of certain construction activities. The public will be advised of these periods through Notice to Mariners and other appropriate means, at least 2–5 days in advance.

The duration of the zone is intended to protect personnel and the marine environment in these navigable waters while the tub sections are being set at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge at Piers 43 and 44, which are adjacent on either side of the federal navigation channel. Except for marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone. To seek permission to enter, contact the COTP or the COTP’s representative by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions

given to them by the COTP or the COTP's designated representative.

The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a).

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size and duration of the safety zone. The temporary safety zone is approximately 450 yards in width and 270 yards in length. We anticipate that there will be no vessels that are unable to conduct business. Excursion vessels and commercial fishing vessels are not impacted by this rulemaking. Excursion vessels do not operate in this area, and commercial fishing vessels are not impacted because of their draft. Some towing vessels may be impacted, but bridge project personnel have been conducting outreach throughout the project in order to coordinate with those vessels. Vessel traffic not required to use the navigation channel will be able to safely transit around the safety zone. Such vessels may be able to transit to the east of the federal navigation channel, as similar vertical clearance and water depth

exist under the next bridge span to the east. This safety zone will impact a small designated area of the Potomac River for 60 days, but coincides with the non-peak season for recreational boating.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive

023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting 60 total days that will prohibit entry within a portion of the Potomac River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T05-0745 to read as follows:

§ 165.T05-0745 Safety Zone; Potomac River, Between Charles County, MD and

King George County, VA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'50.96" N, 076°59'22.04" W, thence south to 38°21'43.08" N, 076°59'20.55" W, thence west to 38°21'41.00" N, 076°59'34.90" W, thence north to 38°21'48.90" N, 076°59'36.80" W, and east back to the beginning point, located between Charles County, MD and King George County, VA. These coordinates are based on datum NAD 83.

(b) *Definitions.* As used in this section---

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

Marine equipment means any vessel, barge or other equipment operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement.* This safety zone will be enforced during the period described in paragraph (f) of this section. A “BRIDGE WORK—DANGER—STAY AWAY” sign facing the northern and southern approaches of the navigation channel will be posted on the sides of the marine equipment on-scene within the location described in paragraph (a) of this section.

(f) *Enforcement period.* (1) The section will be enforced from 7 a.m. on November 2, 2021, through 8 p.m. December 31, 2021.

(2) The public will be advised of the status of the safety zone, to include dates and times, by Broadcast Notice to Mariners, Local Notice to Mariners or other appropriate means.

Dated: November 1, 2021.

David E. O’Connell,
Captain, U.S. Coast Guard,
Captain of the Port Sector Maryland-National Capital Region.

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